

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISRTICT OF TEXAS
SAN ANTONIO DIVISION**

ELIZABETH LONG,)
Plaintiffs,)
)
v.) **CIVIL ACTION NO. 5:22-cv-00923-JKP-ESC**
)
Cat Exteriors & Kensington Marketing Group)
Defendants.)

RULE 37 MOTION TO COMPELL DISCOVERY

Now Comes the Plaintiff, Elizabeth Long, requesting the Honorable Judge of said court to compel defendants to participate in, send intial disclosures and respond to intial discovery requests.

On October 6th Plaintiff requested from Defendants the name of their telephone provider to subpoena the phone records to validate the claim of 14 calls by the plaintiff or validate the claim of only 7 calls by the defendant. Also, Defendants claim to have an opt in form from June 8th of 2020 and July 8th of 2020. Plaintiff also asked for that form. Defendants have not responded to this request. Plaintiff sent intial discovery request on December 27th 2022.

Defendants asked the Honorable Judge Chestney for a stay of discovery on February 22nd 2023 which was promptly denied. Additionally, defendants were instructed to make intial disclosures and share any discovery they have before mediation.

The relevance of this information that the Plaintiff is requesting plays a significant role in determining the statutory fees in the private right to action afforded to the Plaintiff under TCPA.

Which would be necessary for any jury to determine the amount owed to the plaintiff under TCPA and aid in the Plaintiff's settlement negotiations. Additionally, it would determine if it would be necessary for the Plaintiff to amend the claim to include more calls that have not already been documented by Plaintiff. A mandamus of relief may be granted when the denial of discovery goes to the heart of a party's case or vitiates or severely compromises a party's ability to present a viable claim or defense (Allied chem. Corp. (2007) 227S.W.3d 652, 658; able Supply Co. V. Moye (Tex. 1995) 898 S.W. 2d766.772).

The plaintiff has made good faith efforts to keep the lines of communication open between herself and the defendants, and to obtain the disclosure of discovery without actions of the court. The response from the defendants has been evasive and a failure to disclose. They appeared to completely ignore the plaintiff's request and the honorable Judge Chestney's instructions). The Plaintiff has not asked for protected trade secrets. Just for the required information necessary to obtain a verifiable record of calls for comparison to personal records of calls and the record that defendants claim to have. Plaintiff is seeking an independent record on which to compare the most disputed portion of the Plaintiffs claim.

To this date the Plaintiff has not received responses to discovery requests from any of the Defendants in this matter. At this time the plaintiff is not looking for court ordered sanctions or fees at this time. At this time Plaintiff wants answers so we can proceed with litigation and/or settlement negotiations without further delay.

Wherefore, the Plaintiff moves for an order compelling the Defendants to produce complete and executed answers in discovery with the required documents within the next 7 calendar days.

Respectfully Submitted,

/s/ Elizabeth Long

Elizabeth Long, Plaintiff Pro-se

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Certificate of Service

On this Day the 6th of March, 2023, this document was filed with the United States Western District Court San Antonio Division and served upon the following Counsel Via CM/ECF

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